

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 15, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP3341-CR

Cir. Ct. No. 2003CF5586

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL K. EVANS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ and JEAN W. DIMOTTO, Judges. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Michael K. Evans appeals from a judgment of conviction for armed robbery with the threat of force, and from a postconviction

order summarily denying his plea withdrawal motion.¹ The issue is whether Evans is entitled to plea withdrawal because the trial court failed to explain during the plea colloquy that, as a consequence of Truth-in-Sentencing (which eliminated parole and good-time credit), he would serve every day of confinement imposed. We conclude that the trial court was not obliged to inform Evans of the collateral consequences of his guilty plea, namely, that he would serve one day in confinement for each day imposed as a consequence of Truth-in-Sentencing (as we held in *State v. Plank*, 2005 WI App 109, ¶¶12-17, 282 Wis. 2d 522, 699 N.W.2d 235).² Therefore, we affirm.

¶2 Evans pled guilty to armed robbery with the threat of force, contrary to WIS. STAT. § 943.32(2) (amended Feb. 1, 2003). The trial court imposed a twenty-two-year sentence to run consecutive to any other sentence, comprised of fifteen- and seven-year respective periods of confinement and extended supervision. Evans moved for plea withdrawal, contending that the trial court's failure to inform him during the plea colloquy that his period of confinement could not be reduced by parole or good-time, pursuant to Truth-in-Sentencing, rendered his guilty plea unknowing, unintelligent and involuntary. The trial court summarily denied the motion.

¶3 In *Plank*, we held that Truth-in-Sentencing's elimination of parole and good-time credit, resulting in a convicted defendant serving every day of

¹ The Honorable Richard J. Sankovitz presided over plea and sentencing proceedings. The Honorable Jean W. DiMotto decided Evans's postconviction motion.

² At the time Evans litigated this issue, *Plank* had not yet been decided. See *State v. Plank*, 2005 WI App 109, ¶¶12-17, 282 Wis. 2d 522, 699 N.W.2d 235. We decided *Plank* at the conclusion of the appellate briefing schedule in this appeal.

confinement imposed, is a collateral consequence of his or her guilty plea; thus, the trial court is not obliged to explain to a defendant during the plea colloquy that he or she will serve one day in confinement for each day imposed. *See id.*, 282 Wis. 2d 522, ¶17 (citing and quoting *Birts v. State*, 68 Wis. 2d 389, 398-99, 228 N.W.2d 351 (1975) (addresses why trial courts are not obliged to explain to defendants the collateral consequences of their guilty pleas)). *Plank* controls, rejecting Evans's position. *See id.*, 282 Wis. 2d 522, ¶¶12-17.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

